

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

ALLEGHENY CASUALTY COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:19-cv-01603
	)	
OPCON, INC., CLAYTON GRAHAM, and	)	
CHERYL GRAHAM,	)	
	)	
Defendants.	)	

**ALLEGHENY CASUALTY COMPANY’S MOTION FOR PROVE-UP OF FEES AND  
ENTRY OF JUDGMENT**

The Plaintiff, Allegheny Casualty Company (“ACC”), by its undersigned counsels, The Law Offices of T. Scott Leo, P.C., submits its Motion for Prove Up of Fees against the Defendants, Opcon, Inc. (“Opcon”), Clayton Graham (“Clayton”), and Cheryl Graham (“Cheryl”), collectively the “Defendants”, pursuant to Rule 58 of the Federal Rules of Civil Procedure, and in support, states as follows:

1. ACC seeks reimbursement/indemnity for losses it sustained as a surety under bonds issued to Opcon, Inc. at the request of the defendants. Liability arises under the terms of an Indemnity Agreement executed by the defendants, OPCON, Inc., Clayton Graham and Cheryl Graham. (*See* Dkt. No. 1)
2. The amount in controversy exceeds \$75,000.00 and the parties are citizens of different states. Thus, the court has subject matter jurisdiction pursuant to 28 U.S.C. Sec. 1332. (*See* Dkt. No. 1)
3. On May 21, 2019, this court entered a Default Order against all Defendants and set the matter for presentation of a Motion for Prove-up. (*See* Dkt. No. 12)

4. OPCON was a general contractor for commercial buildings and engaged in the business of construction logistics. (See Dkt. No. 1)

5. In consideration of the execution of and Indemnity Agreement by the defendants in which OPCON, Clayton Graham and Cheryl Graham agreed to indemnify ACC for losses, costs, and expenses incurred on account of its bonds, ACC issued various bonds, totaling to the penal sum of \$ \$5,589,395.00, to the company OPCON. (See Dkt. No. 1; See Affidavit of George Rettig (“Affidavit”), **Exhibit 1**; attached, Indemnity Agreement, Exhibit A).

6. ACC’s initial complaint sought both damages for losses already sustained and a deposit of collateral pursuant to the terms of the Indemnity Agreement for estimated remaining liability. (See Dkt. No. 1)

7. Since the filing of the Complaint, ACC has resolved all payment bond claims and entered into contracts to complete bonded contract obligations such that its losses can be finally determined and a monetary judgment entered based upon such losses. An order requiring a deposit of collateral is no longer required.

8. The losses and damages sustained by ACC under each bond total \$1,471,897.84 and are supported by the Affidavit of George Rettig, attached, and itemized as follows (See Affidavit, **Exhibit I**, attached as Exhibit B to the Affidavit):

A. Bond CSACSU 0590230; Project: Jesse Brown VA Med. Ctr, Replace Backup Condensing Unit 11B Roof; Contr. # VA69D-16-C-0270

**Payment Bond Losses Total: \$110,000**

Payment Bond Loss Detail:

\$110,000 Roberts Environmental Control.

(See Exhibit B-1).

B. Bond CSACSU 0709470; Project: Village of Schaumburg - Public Safety Building Improvements

**Payment Bond Losses Total: \$135,513.92**

Payment Bond Loss Detail:

\$6,378.00 - C.W. Burns Co., Inc.

\$19,802.57 - Valley Electrical Contractors, Inc.  
\$24,315.85 - Midwest Wallmasters, Inc.  
\$20,366.90 - PIO Custom Cabinetry, Inc.  
\$4,340.00 - Carney & Company, Inc.  
\$52,694.60 - Flooring Resources Corp.  
\$7,616.00 - Midwest Masonry, Inc.

(See Exhibit B-2).

- C. Bond CSACSU 0590220; Project: MICC FORT MCCOY Water Main Repair on S Street; Contr.#: W911SA-16-D-0006-0001

**Payment Bond Losses Total: \$31,877.66**

Payment Bond Loss Detail:

\$31,877.66 - Blake Drilling Company, Inc.

(See Exhibit B-3).

- D. Bond CSACSU 0690183; Project: MICC Fort McCoy - Renovate B1101 for RMO Storage; Contr.#: W911SA-15-D-0024

**Payment Bond Losses Total: \$45,497.18**

Payment Bond Loss Detail:

\$16,851.25 - Veterans Electric, LLC

\$301.93 - All American Lumber Inc.

\$28,344.00 - Don's Plumbing Service, Inc.

(See Exhibit B-4).

- E. Bond CSACSU 0709466; Project: REPLACE LAUNDRY SYSTEM AT MADISON VA HOSPITAL; Contr.#: VA69D-16-C-0164 - VA69D-16-J-6026

**Payment Bond Losses Total: \$313,474.87**

Payment Bond Loss Detail:

\$177,304.87 - Kemco Systems Co, LLC

\$23,500.00 - Veterans Electric, LLC

\$96,000.00 - Hooper Corporation

\$16,670.00 - Raymer Pipe & Duct Insulation.

(See Exhibit B-5).

- F. Bond CSACSU 0709475; Project: HOFFMAN ESTATES PARK DISTRICT - Remodel-Prairie Stone Sports/Wellness Ctr Locker Room

**Payment Bond Losses Total: \$190,388.51**

Payment Bond Loss Detail:

\$5,664.61 - S.J. Carlson Fire Protection

\$171,882.10 - Flooring Resources Corporation

\$210.00 - Carney & Company, Inc.

\$12,631.80 - Midwest Wallmasters, Inc.

(See Exhibit B-6).

- G. Bond CSACSU 0709480; Project: Mass Notification System for Building 56, USAG Rock Island Arsenal, IL; Contr. #: W52P1J-17-C-5013

**Payment Bond Losses Total: \$261,846.00**

Payment Bond Loss Detail:

\$261,846.00 – Joseph G. McGuinness & Associates

(See Exhibit B-7).

H. Bond CSACSU 0709483; Project: Rehabilitation Structural Repair at Captain James A. Lovell Federal Health Center

**Payment Bond Losses Total: \$37,818.00**

Payment Bond Loss Detail:

\$37,818.00 - Monson Nicholas, Inc.

(See Exhibit B-8).

I. CSACSU 0709485; Project: Dialysis Water Systems Site Prep, Jesse Brown VAMC.

**Projected Performance Bond Loss: \$345,481.70**

The Performance Bond Loss arises out of 3/20/19 termination for default (See Affidavit of George Rettig attached, Exhibit 1); ACC solicited two completion bids and has undertaken to complete the project by entering into a completion contract with the lowest bidder, Blue Yonder Inc. for \$1,095,072.75; the second lowest bidder was Industria Inc. \$2,362,586.00; After subtracting the remaining \$749,591.00 bonded contract amount from the completion contract, ACC's projected loss is at \$345,481.70. (See Exhibit B-9).

9. The Indemnity Agreement provides in part as follows:

SECOND: The Contractor and Indemnitors shall exonerate, indemnify, and keep indemnified the Surety from and against and all liability for losses and/or expenses of whatsoever kind or nature (including, but not limited to, interest, court costs and the cost of services rendered by counsel, investigators, accountants, engineers or other consultants, whether consisting of in-house personnel or third party providers) and from and against any and all such losses and/or expenses which the Surety may sustain and incur: (1) By reason of having executed or procured the execution of the Bonds, (2) By reason of the failure of the Contractor or Indemnitors to perform or comply with the covenants and conditions of this Agreement or (3) In enforcing any of the covenants and conditions of this Agreement.

(See Affidavit of George Rettig attached, Indemnity Agreement, Exhibit A, "SECOND" paragraph under heading "INDEMNITY").

Wherefore, Allegheny Casualty Company, prays for the Court to grant its Motion for prove-up of damages and entry of judgment in the amount of \$1,471,897.84.

Date: August 1, 2019

Respectfully Submitted,

By: /s/ Saloni Shah  
One of its Attorneys

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